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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1022

EASTERN STATES PETROLEUM CORPORATION OF PANAMA, S.A.,

Petitioner,

against

ORION SHIPPING & TRADING CO., INC.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York,[1] confirming an arbitration award in favor of respondent against the petitioner, is found at page 449a* and is reported at 206 F. Supp. 777. The opinion of the Court of Appeals for the Second Circuit,[2] affirming the judgment entered on the order confirming the arbitration award, is found at page 465a and is reported at 312 F. 2d 299.

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[1] The District Court modified the arbitration award by deleting therefrom references to Signal Oil & Gas Company, the guarantor of the petitioner, as a party collaterally liable for payment of the arbitration award.

[2] The Court of Appeals affirmed the decision and order of the District Court. Respondent's petition for re-argument and for consideration *en banc* (472a) as to the liability of Signal Oil & Gas Company was denied (484a and 486a) and this issue is not involved here.

* Record references to the proceeding in the Court of Appeals consist of the page number in the certified record.

JURISDICTION

The judgment of the District Court for the Southern District of New York was affirmed on January 18, 1963. The Petition for the Writ of Certiorari was filed on April 16, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

The only question presented is whether on a motion to vacate an arbitration award under the United States Arbitration Act, a ground other than the statutory provisions of Section 10 of said Act[3] may properly form the basis for such relief.

The questions formulated at page 3 of the Petition are wholly irrelevant to the issue before this Court. On non-statutory grounds, petitioner challenges the award of the arbitrator, as modified, which both the District Court and the Court of Appeals hold to be conclusive of the issues and binding upon the petitioner.

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[3] Section 10 of the Federal Arbitration Act (9 U.S.C. §10) provides:

"In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matters submitted was not made."

STATEMENT

This proceeding was commenced by a motion of respondent to confirm an arbitration award and a cross motion of petitioner to vacate the award. The dispute arose under a maritime contract which contained a clause providing that any dispute thereunder be arbitrated. A brief reference to the substance of the contract and some related events is indicated.

For several weeks prior to October 8, 1954, respondent and Eastern States Petroleum Company, Inc. (a Delaware corporation, with a refinery and principal office at Houston, Texas, which later changed its name to Eastern States Petroleum and Chemical Corporation ["Eastern American"] and which was subsequently merged into Signal Oil & Gas Company ["Signal"]), negotiated the terms of a long term ton-mileage contract of affreightment. The initial contract was prepared in the names of the respondent and Eastern American (99a). The latter thereafter requested respondent to permit it to substitute in the contract the name of the petitioner, its wholly owned Panamanian subsidiary, on the express understanding that Eastern American would always remain responsible for the full performance of the contract.

On October 20, 1954, a ton-mileage contract of affreightment for a term of five years and for the carriage of over 20,000,000 barrels of crude oil was executed by petitioner and respondent (131a) and concurrently therewith a guaranty of said contract (123a) was executed by Eastern American ("Contract").

The Contract provided for *world-wide trading*† and was based on a mileage factor requiring petitioner to furnish about one-tenth of a barrel of crude oil for every 1,000 miles of transportation. Thus, a barrel of cargo carried from Mena al Ahmadi to Houston had a mileage equivalent of one barrel.[4] Cargoes carried for lesser or greater distances were adjusted in proportion to actual miles of transportation.

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[4] Referred to as a "Houston" barrel and based on the carriage of one barrel for a distance of 10,013 nautical miles.

† Emphasis ours.

In July, 1957, the United States Government initiated the "Voluntary Oil Import Program" to regulate the importation of crude oil into the United States. It was the experience of the Government that some importers, including Eastern American, were refusing to comply with the Voluntary Oil Import Program even though the basis for restricting such imports was the impairment of national security. Accordingly, the Government on March 28, 1958 adopted sanctions which barred an importer from selling petroleum products to the Government until it satisfied the Administrator of the Voluntary Oil Import Program that it had not imported into the United States crude oil in excess of its allotment under the Voluntary Oil Import Program for three months prior to the submission of its bid to the Government.

Eastern American sold to the United States Government, between 1953 and 1957, petroleum products totaling $99,761,922.49. Part of these sales were made during the period of the Voluntary Oil Import Program (213a). However, with the three-month-prior-to-bid compliance requirement, Eastern American's sales to the government were suspended. Unwilling to abide by the penalty, Eastern American sought to attack the constitutionality of the entire Voluntary Oil Import Program, and on July 21, 1958 filed a complaint "for a declaratory judgment and injunctive relief to declare null, void and illegal * * * the so-called 'Voluntary Oil Import Program' ". (247a)

Judge Holtzoff of the District Court for the District of Columbia denied the injunctive relief and dismissed the complaint (163 F. Supp. 797). On appeal, the United States Court of Appeals for the District of Columbia, reversed on the ground that the complaint should not have been dismissed and remanded the cause to the District Court (271 F. 2d 457). On reargument, Judge Youngdahl again denied the injunctive relief but continued the matter for trial on the merits (165 F. Supp. 363).

Eastern American continued to import crude oil in excess of its allotted quota under the Voluntary Oil Import

Program until the Mandatory Oil Import Program was adopted on March 10, 1959. It again sought administrative relief and urged grounds identical with those theretofore urged upon the Administrator of the Voluntary Oil Import Program, prior to commencing its suit in the District Court for the District of Columbia.

Following an adverse ruling by the Oil Import Appeals Board, Eastern American, with its suit still pending in the District of Columbia, commenced a further action at Houston, Texas, in the United States District Court for the Southern District of Texas.

The Texas District Court summarily dismissed the complaint, stating that the grounds upon which Eastern American sought relief were essentially the same as those asserted in the then pending case in the District of Columbia (40a), and accused Eastern American of "forum shopping", *Eastern States Petroleum & Chemical Corp.* v. *Walker*, 177 F. Supp. 328, (S.D. Tex. 1959).

Yet immediately following the dismissal of the complaint in the Texas case and on September 29, 1959, petitioner cancelled the Contract on the ground that " * * * our affiliated company Eastern States Petroleum and Chemical Corporation, now merged into Signal Oil & Gas Company, has failed in its lawsuit * * * ." (180a).

Subsequent to the adoption of the Mandatory Oil Import Program, and prior to Eastern American's appeal to the Oil Import Appeals Board, respondent agreed to amend the Contract and permit the shipment over a two-year period of the quantity of crude oil then required by the terms of the Contract to be shipped in one year. (Addendum No. 3) (124a). Under the Contract the petitioner was required to furnish 10,500 "Houston" barrels a day,[5] and this amount was reduced to 5,250 barrels per day. This amendment more than offset Eastern American's reduction of import quota barrels under the Mandatory Oil Import

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[5] Petitioner's obligation to furnish 10,500 barrels per day was unrelated to the Mandatory Oil Import Program. As a Panamanian corporation it had no import quota allocations.

Program as applied to the Contract, and also satisfied the requirement for a plea of "hardship" to the Oil Import Appeals Board.

When the Contract was unilaterally cancelled on September 29, 1959, market freight rates were far below the Contract rate and there remained to be carried over 2,866,000 barrels of crude oil. On October 7, 1959, respondent commenced an action in the District Court against the petitioner and Signal, reserving the right to submit the dispute to arbitration, and process *in personam* with clause of foreign attachment was issued attaching as security the sum of $1,150,000 in a bank account of Signal. Meanwhile, respondent demanded arbitration, and after the attachment was vacated, the petitioner sought to avoid arbitrating the dispute and refused to name an arbitrator. Thereafter, a Memorandum and Order was entered in the District Court (90a) compelling the petitioner to proceed to arbitration before the arbitrator appointed by the respondent[6] and the decision of the District Court was affirmed by the Court of Appeals (284 F. 2d 419).

The petitioner thereupon moved in the District Court for an order to set aside the appointment of the arbitrator appointed by the respondent, and to avoid further delay respondent agreed to join with petitioner in selecting an arbitrator. Petitioner and respondent thereafter mutually agreed upon Admiral Edmond J. Moran as sole arbitrator

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[6] The arbitration clause provided for unrestricted submission of any dispute and authorized the sole arbitrator to make a binding decision, viz.:

> "Any dispute arising during the execution of this Contract of Affreightment shall be settled in New York, Owner and Charterer each appointing an Arbitrator—Merchant or Broker—and the two thus chosen, if they cannot agree, shall nominate a third Arbitrator—Merchant or Broker—whose decision shall be final. Should one of the parties neglect or refuse to appoint an Arbitrator within twenty-one days after receipt of request from the other party, the single Arbitrator appointed shall have the right to decide alone, and his decision shall be binding on both parties. For the purpose of enforcing awards, this agreement shall be made a Rule of Court." (155a).

and a stipulation and order to this effect was entered in the District Court (88a-89a).

The Contract provided that respondent could furnish tonnage which it "owned, operated, chartered or otherwise controlled" (150a); without restriction as to flag and subject only to a draft limitation of 35 feet at the discharging port and a deadweight not exceeding 39,000 tons.

The Contract also provided that by paying respondent demurrage at rates provided in the Contract (155a), petitioner had the right to stop or reduce the amount of crude oil it was required to furnish by directing the respondent to "lay-up" all or any portion of the equivalent tonnage required to fulfill the Contract.

When Eastern American applied to the Oil Import Appeals Board for an increase in its quota, and subsequently commenced its suit in the Texas Court, it was, in part, based on the ground of "special and undue hardship" under its "long-term tanker contracts" which included the Contract (32a). It was the sworn testimony in both proceedings that Eastern American was losing $16,000 per day (32a) on such contracts. Applying Eastern American's own exhibits and testimony in those proceedings to the Contract as of September 29, 1959, showed a prospective loss to the petitioner under the Contract in excess of $2,600,000.

Similarly, the arbitrator directed petitioner and respondent to submit calculations showing the cost to petitioner had it performed the Contract, but exercised its option under clause 15 to be excused from furnishing any cargoes after September 29th, 1959, the date of cancellation. The evidence was that petitioner would have been obliged to pay respondent demurrage in the amount of $1,428,158.19 to be excused from further performance of the Contract.

That petitioner had no further use for respondent's tonnage cannot be doubted. However, it was not the result of any reduction in the import quota which created this

situation. On the contrary, petitioner concedes it had more than adequate quota to perform the Contract (211a). Indeed, its entire "Change of Trade" argument (66a) to reduce its damages was predicated on the notion it could have imported up to 21,300 barrels per day as would have been required under the Contract for the shorter distances in the Caribbean trade.

It may be relevant to observe, also, that after cancelling the Contract, Signal initiated a policy of "exchanging" its import quotas for domestic oil. According to articles in the *Gas & Oil Journal* and *Petroleum Week*,[7] both authoritative industry publications, a holder of an import quota for foreign crude oil could "exchange" the quota, or any part thereof, for domestic crude oil. By swapping the right to import foreign crude oil, the holder of the import quota acquired a like amount of domestic crude oil, and, in addition, realized a profit of from $.30 to $1.05 on each barrel "exchanged".

Signal filed with the Department of Commerce reports required under the Mandatory Oil Import Program which show that during the unexpired term of the Contract, Signal "exchanged" import quotas with domestic oil companies, for 8,629,184 barrels.

Respondent's claim was for $1,132,706.88, with interest, and the arbitrator awarded respondent damages of $988,081.98, with interest. Judgment was entered in favor of respondent and against petitioner for $1,079,983.10.

ARGUMENT

The petitioner's version of the questions presented is formulated on an unconscionable distortion of the record. The allegation that Admiral Moran refused to require proof that damage was actually sustained and applied his own formula in making his award, cannot be supported by the evidence in this case.

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[7] The weeks of April 27, 1959 and March 10, 1961, respectively.

I

In the courts below, and again here, petitioner ignored the distinction between a refusal to *hear* or *accept* pertinent and material evidence offered by a party, and a refusal to compel the adverse party to produce certain documents found to be irrelevant and immaterial to the dispute.

Petitioner requested an accounting of virtually all of respondent's vast shipping operations during the eighteen-month period following cancellation of the Contract; none of which was related to the Contract. Admittedly, its purpose was to select respondent's most favorable business ventures and urge the arbitrator to use the earnings from such ventures in mitigation of its damages. Before ruling on this request, the arbitrator required petitioner and respondent to submit interim memoranda on the point.

In substance, it was respondent's position that the documents requested were irrelevant and immaterial since the Contract was not one for "personal services", nor one which the parties contemplated should be performed with any "special means or instrumentality", and therefore the rule as to mitigation of damages by subsequent earnings and profits did not apply to this class of contract, citing, among others, *Sullivan* v. *McMillian*, 37 Fla. 134, 19 So. 340 (Sup. Ct. 1896) *Grinnell Co.* v. *Voorhees*, 1 F. 2d 693 (3rd Cir. 1924); *Restatement, Contracts*, 336(e).

The petitioner admitted the Contract was not a charter and provided for the furnishing of transportation as a *commodity*,† which requires neither "personal service" nor "special means or instrumentalities" i.e., "named" vessels for performance. Nevertheless, every case cited by the petitioner in support of its version of the proper measure of damages, and the materiality of the documents requested, related to cases concerned with charter parties for "named" vessels. Examples of the cases relied upon by petitioner are *Ainsworth Coal & Iron Co.* v. *Grangesberg Oxelosund*, 287 Fed. 291 (4th Cir. 1923), *United Transp. Co.* v. *Berwind-White Coal-Mining Co.*, 13 F. 2d 282 (2nd Cir. 1926), *Cargo Ships El Yam Ltd.* v. *Stearns &*

† Emphasis ours.

Foster Co., 149 F. Supp. 754 (S.D.N.Y. 1955), and *Abby* v. *States Marine Corp.*, 107 F. Supp. 484 (S.D.N.Y. 1951).

After careful consideration, the arbitrator ruled that the documents requested were immaterial. In this respect, the District Court found that "the arbitrator let the parties put in any evidence they desired in connection with the issue before him" (455a). Furthermore, the petitioner submitted detailed exhibits compiled from market reports which establish substantially the same information concerning respondent's chartering that it desired to obtain from respondent's records. In any event it is clear that under the New York arbitration law, upon which the federal statute was patterned,[8] a refusal to require one party to produce documents on the demand of the adverse party is not a refusal by the arbitrator to accept evidence constituting statutory misconduct. *A. D. Juilliard & Co., Inc.* v. *Baitch & Castaldi, Inc.*, 152 N.Y.S. 2d 394 (Sup. Ct. 1959); *Milliken Woolens, Inc.* v. *Weber Knit Sportswear*, 20 Misc. 2d 504, 192 N.Y.S. 2d 408 (Sup. Ct. 1956), rev'd on other grounds 9 N.Y. 2d 878, 175 N.E. 2d 826 (1961).

Moreover, petitioner's attorney admitted during the hearings that the only reason he requested the production of respondent's records was "that notwithstanding the contract right Orion did commit certain vessels"[9] (342a). He continued:

> "That was the only reason we asked for it, not because we felt that that was the only way you could measure

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[8] *Zip Mfg. Co.* v. *Pep Mfg. Co.*, 44 F. 2d 184 (D. Del. 1930); to the same effect referring to 9 U.S.C. §§9, 10 and 11, *Amicizia Societa Navegazione* v. *Chilean Nitrate & Iodine Sales Corporation*, 184 F. Supp. 110, 117 (S.D.N.Y. 1959):

> "The federal act in respect to the sections now under consideration is almost verbatim like the corresponding provisions of the New York statute, so that the state practice may be regarded as highly persuasive, if not controlling."

[9] To create a climate for acceptance of its version of fixing damages (i.e. based on cases relating to charter parties for "gamed" vessels similar to those referred to herein at page 9), petitioner erroneously referred to vessels employed more than once under the Contract as "committed" or "earmarked" vessels.

the damages, but because we felt that the record ought to be measurable not only on the basis of what the contract said, but what the parties actually did. * * *" (342a).

II.

The Federal Arbitration Act confers no authority upon federal courts to ascertain whether arbitrators correctly applied the law in reaching their award.[10] Nor does any other statute. On the contrary, the courts (including this Court) have held that the award of the arbitrator is final. *Bernhardt v. Polygraphic Co.*, 350 U.S. 198 (1956); *Wilko v. Swan*, 346 U.S. 427 (1953); *Amicizia Societa Navegazione v. Chilean Nitrate & Iodines Corp.*, 274 F. 2d 805 (2nd Cir. 1960) cert. denied 363 U.S. 843 (1960). The court review provisions of Section 10 of the federal statute, make it beyond doubt that an arbitration award may not be reviewed, except in certain situations involving "corruption, fraud, or undue means", "evident partiality", "misconduct" in refusing postponements or refusing to hear "pertinent and material" evidence, or where the arbitrators have "exceeded their powers". Moreover, the arbitration agreement signed by the petitioner and respondent provided that the award of the arbitrator shall be final.

It is highly significant that the petitioner has not cited a case under the Federal Arbitration Act in support of the Petition. Instead the petitioner has relied upon *United Steel Workers v. Enterprise Corporation*, 363 U.S. 593 (1960), which was concerned with an arbitration award under a collective bargaining agreement, and *Anthony P. Miller, Inc. v. Wilmington Housing Authority*, 179 F. Supp. 199 (D.C. Del. 1959). The latter was not concerned with an arbitration award, but arose on motions for summary

[10] The House of Representatives' Report on the bill which became the Federal Arbitration Act noted that once the arbitral process commences, "the arbitration proceeds without interference by the Court". H. Rep. No. 96, 68th Cong., 1st Sess. (1924), P. 2

judgment in connection with findings of fact by a contracting officer of a Housing Authority.

Since neither of the two cases relied upon by the petitioner involved a proceeding to vacate an arbitration award under the Federal Arbitration Act, both are inapplicable. It is settled that the provisions of the Federal Arbitration Act do not apply to collective bargaining agreements (*Amalgamated Assn. S.E.R. & M.C. Employees* v. *Pennsylvania Greyhound Lines, Inc.*, 192 F. 2d 310 (3rd Cir. 1951); *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957).

In the United Steel Workers case the District Court, construing section 301 of the Labor Management Relations Act of 1947 (29 U.S.C. §185), held an arbitration award ordering reinstatement and back pay to individual employees valid and ordered its enforcement, 168 F. Supp. 308 (S.D.W.Va. 1958). The Court of Appeals modified (269 F. 2d 327 (4th Cir. 1959)), and this Court reversed and reinstated, in part, the decision of the District Court. By way of emphasizing (and probably as dictum) that an arbitrator of an industrial dispute under a collective bargaining agreement must not exceed his powers or go beyond the submission, this Court, at page 597, said "* * * an arbitrator * * * does not sit to dispense his own brand of industrial justice * * *. (w)hen the arbitrator's words manifest an infidelity to this obligation, Courts * * * refuse enforcement of the award."

While this case involved a labor dispute and falls into a special class of cases, it has been suggested in one decision that it may be applicable to all arbitration. In *San Martine Compania De Nav.* v. *Saguenay Term. Ltd.*, 293 F. 2d 796 (9th Cir. 1961), the court thought the quoted language probably was similar to a "manifest disregard of the law in the context of the language used in *Wilko* v. *Swan*", 346 U.S. 427 (1953), i.e., when the "arbitrators understand and correctly state the law, but proceed to disregard the same". For very sound reasons the Petition is not predicated on this ground. But given the most favor-

able interpretation the United Steel Workers case lends no support for granting the Petition.

Anthony P. Miller, Inc. v. *Wilmington Housing Authority*, 179 F. Supp. 199 (D. C. Del. 1959), also relied upon by petitioner did not involve an arbitration and accordingly the court was not limited by the court review provisions of the federal statute. Plaintiff alleged that defendant wrongfully withheld a sum of money due to gross errors by a contracting officer in the calculations of figures under a construction contract. The court said at page 204 that "the contracting officer in applying the formula referred to as step 6" was guilty of such obvious and gross error as, under the decisions, would justify a Court in setting the finding aside". It so holding it described the action of the contracting officer as "constructive fraud".

But given the same state of facts under the Federal Arbitration Act and the result would be dissimilar because of the limitation of the court review provisions of Section 10 of the federal statute.[12]

The Miller case is the authority upon which the petitioner relies for its allegation that Admiral Moran applied his own formula in assessing damages. There the complaint was "serious errors in calculations". Here petitioner complains that the application by the Arbitrator of the generally accepted method of assessing damages of the difference between the contract rate and the market value, transforms this legal doctrine into the Arbitrator's "own formula". It is difficult, if not impossible, to see the analogy.

The District Court found that "the moving papers failed to demonstrate the existence of any of the statutory

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[11] Step 6 of the six step calculation devised to estimate the delay attributable to the stage of labor was: "Reduce the figure of 181.92 days to 151.9 days by multiplying 181.92 by 83.5%".

[12] If miscalculation of figures was apparent on the face of the award, at most the award could be modified or corrected. 9 U.S.C. §11(a).

grounds for vacating the Arbitrator's award" against petitioner (453a). Following the court review provisions of the federal statute, the court declined to review *de novo*, the arbitration proceedings and the award of the Arbitrator. In so doing, the court followed *Amicizia Societa Navigazione* v. *Chilean Nitrate & Iodine Sales Corp.*, 274 F. 2d 805, (2d Cir. 1960), cert. denied 363 U.S. 843 (1960).

Ones dissatisfaction with the quantum of damages awarded by an arbitrator is not a statutory ground for vacating an award. Nor are courts concerned with the quantum of damages awarded in arbitrations. In *Harris* v. *East India Trading Co., Inc.*, 16 Misc. 2d 87, 144 N.Y.S. 2d 894, 900 (Sup. Ct. 1955), the court held as follows:

> "Moreover, it is my opinion that, even if respondent had demanded arbitration limited to a fixed claim for petitioner's anticipatory breach, the arbiters would have had the power under this sweeping clause to undertake a comprehensive study of all relevant factors and require either performance of the contract or payment of damages on the basis of a default date deemed by them to be proper and fair in accordance with the contract, market situation, trade practices and the acts of the parties. It does not seem to me that the courts should interfere with regard to the quantum of damages * * *."

In *Transpacific Transport Co.* v. *Sirena Shipping Co.*, S.A., 9 App. Div. 2d 316, 193 N.Y.S. 2d 277, 280 (1959) aff'd. 8 N.Y. 2d 1048, 170 N.E. 391 (1960), the Appellate Division said:

> It is now well-settled law that there may be remedies in arbitration which would not have been available in a court within conventional actions or proceedings at law or in equity. It is not required that the mode or the quantum of the relief available be the same."

Respondent respectfully suggests that the record in this case evidences no error of law or fact on the part of

the Arbitrator in rendering his award. However, as federal courts have repeatedly held, an error of law or fact does not constitute a statutory ground under the Federal Arbitration Act for vacating an arbitration award.

The District Court said:

"The conclusion of the arbitrator not to consider actual cost is in accordance with the general method of computing damages where damage is ordinarily determined by deducting the market value from the contract price. Actual cost in such case is usually irrelevant. *McCormick, Damages*, §§ 44, 46." (454a)

* * *

"At the very most the arbitrator's method of computation was an error in interpretation of law and it is well settled that this in insufficient ground for refusing to confirm his award. *Wilko* v. *Swan*, 346 U.S. 427, 436-37 (1953); *Commercial Solvents Corp.* v. *Louisiana Liquid Fertilizer Co.*, 20 F.R.D. 359, 362 (S.D.N.Y. 1957)." (455a)

The Court of Appeals said:

Petitioner's "motion to vacate the award of damages on the ground that it was improperly calculated was correctly denied by Judge Dawson in the court below, for the reasons there stated. Not only has this Court already determined, on the first appeal, that the manner of computing damages was for the arbitrator and not for the courts, 284 F. 2d at 421, but the law is clear that an arbitration award based upon a misinterpretation of law or an insufficiency of supporting facts will not be overturned.[13] *See Wilko* v. *Swan*, 346 U.S. 427, 436-37 (1953); *Amicizia Societa Navegazione* v. *Chilean Nitrate & Iodine Sales Corp.*, 274 F. 2d 805, 808 (2d Cir. 1960) * * *." (467a)

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[13] Footnote omitted.

The petitioner has offered no reason which would justify the exercise by the Court of its discretion to grant a writ of certiorari. This is not a case where the Court of Appeals has rendered a decision in conflict with the decision of another circuit on the same matter. And it is not a case where there is involved an important undetermined question of law which must be determined. Nor is there a question here which is important to the development of federal law relating to arbitration, because the issue of the case is resolved by well recognized and already existing principles. *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198 (1956); *Wilko* v. *Swan*, 346 U.S. 427 (1953); *Amicizia Societa Navegazione* v. *Chilean Nitrate & Iodine S. Corp.*, 184 F. Supp. 116, 274 F. 2d 805 (2nd Cir. 1960), cert. denied 363 U.S. 843 (1960).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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